

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
HUMAN RESOURCES DIVISION
ONE ASHBURTON PLACE, BOSTON, MA, 02108**

MEMORANDUM

TO: Cabinet Secretaries and Agency Heads

FROM: James J. Hartnett, Jr. Personnel Administrator

DATE: October 6, 1997

SUBJECT: New Policy on Domestic Violence

On August 1, 1997, Governor Argeo Paul Cellucci issued Executive Order 398, which directs all Executive Branch agencies to implement a policy of zero-tolerance for domestic violence. This is a serious issue that not only affects the security of the workplace, but also employee morale, productivity and absenteeism. In response to the Executive Order, the attached policy is being issued by the Human Resources Division, and all agencies are requested to distribute this policy immediately to all their employees. The policy contains the following major provisions:

- A definition of domestic violence and related terms;
- A description of the benefits that will be provided to employees who are victims of domestic violence, including:
 - 15 days of paid leave, and up to 6 months of unpaid leave, for victims to attend to issues of domestic violence,
 - information on referral and other services available to help both victims and abusers;
- Workplace security measures that agencies should implement;
- Education and training for both supervisory personnel and affected employees that will be offered by HRD;
- An explanation of how acts of domestic violence by employees should be handled and how disciplinary actions would apply.

For the 15 days of leave with pay, agencies are asked to use the attendance exception of LWP,

until a separate code for this leave is designated. Leave without pay should be recorded as such and accrual/insurance benefits should be handled in the same manner as any leave without pay (excluding FMIA and medical leave).

HRD will conduct an informational session on the policy on Friday, November 14, 1997 from 10:00 a.m. to 12:00 p.m. in the HRD 3rd Floor conference room, One Ashburton Place, Boston, MA- 02108. A detailed Question and Answer Guide will be developed for agency use as a result of this briefing. In addition, an HRD training program for all agencies concerning Domestic Violence issues will be provided at a later date.

Any questions concerning the policy should be directed to Kevin Preston, Director of the Office of Employee Relations, at 617-727-5403.

COMMONWEALTH OF MASSACHUSETTS HUMAN RESOURCES DIVISION

Policy for the Prohibition of Domestic Violence

Policy

The Commonwealth has a zero-tolerance policy for domestic violence occurring within or outside the workplace. Effective immediately, it is the policy of the Commonwealth that all employees work in an environment free from all form of domestic violence. Domestic violence undermines the integrity of the work place and the personal safety of the individual.

Authority

Executive Order 398 establishes a zero tolerance policy for domestic violence and requires state agencies to issue written policies against domestic violence and to provide copies of the policy to all employees. The Executive Order applies to all individuals employed on a full-time or part time basis by the Office of the Governor or any state agency under the Executive Department.

The Human Resources Division (HRD) is requesting agencies to adopt this policy as written in order to comply with the Executive Order. This policy does not prevent agencies from adopting more stringent policies or continuing more stringent policies currently in effect, such as those implemented by public safety agencies.

Definition of Domestic Violence

Chapter 209A of the Massachusetts General Laws defines domestic violence as a form of abuse among family, or household members, which includes those individuals who are or have been involved in a substantive dating relationship. Abuse is defined as the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm; or
- placing another in fear of imminent serious physical harm; or
- causing another to engage involuntarily in sexual relations by force, threat of force, or duress.

Family or household members are persons who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage; I .
- have a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive-dating or engagement relationship.

Chapter 209A provides a victim protection from an abuser through the issuance of a restraining order. Such an order may order the abuser to refrain from abuse, to vacate the home, to comply with temporary custody and support orders, and/or to have no contact with the victim at all times. Although Chapter 209A orders are civil actions, violations of certain provisions constitute criminal offenses for which arrest is mandatory.

For the purposes of initiating disciplinary action against an employee accused of abuse, there must be a judicial finding of probable cause that the employee committed an act of abuse against a family, or household member. An employee may, however, be transferred to a new location if the employee is named as a defendant on a protective order. Transfers will be implemented in order for the Commonwealth to facilitate an employee's compliance with a court order.

The Commonwealth's view of domestic violence reflects, but is not limited to, the following considerations:

- A man as well as a woman may be the victim of domestic violence, and a woman as well as man may be the abuser.
- The victim does not have to be the opposite sex from the abuser.

Roles and Responsibilities

The Human Resources Division shall:

- Issue, update and advise agency personnel in how to implement the statewide Domestic violence Policy. I

- Provide training to agencies on the Commonwealth's policy and domestic violence awareness, using curricula developed by the Governor's Commission on Domestic Violence.
- Disseminate informational materials for all employees, managers and supervisors.

Agency Heads shall:

- Ensure that the Commonwealth's policy is adopted and implemented.
- Ensure that each employee receives:
 - A copy of the Commonwealth's policy.
 - Notification of any changes to the policy, as soon as administratively possible.
- Foster a climate in which victims can be comfortable disclosing abuse.
- Strongly encourage employees to report behavior which occurs in the workplace which they believe to be domestic violence.
- Determine the nature of disciplinary action to be taken against employee abusers.
- Assign an employee to function as the Domestic Violence Coordinator. The Coordinator would oversee the domestic violence program of the agency, including policy distribution, training, and provision of resource and referral information.
- Provide or arrange for the provision of g to all agency supervisors and employees on domestic violence issues, assess additional agency training needs in this area on an ongoing basis, and work with HRD in meeting those needs.
- Maintain accurate and current records of reports of domestic violence, including active restraining orders when notified of them. Such records will be kept confidential to the extent possible
- When notified of a restraining order in effect, utilize all reasonable efforts to address the employee's concerns about safety and report any workplace violations of such order to the police.

Employees shall:

- Ensure that they do not participate in any form of domestic violence, either within or outside the workplace.

- Cooperate in the investigation of alleged domestic violence by providing information they possess concerning such matters.
- Report behavior in the workplace which they believe to be domestic violence to their supervisor, or the police when appropriate.

Protection to Domestic Violence Victims

The Commonwealth recognizes that victims of domestic violence may suffer from physical, mental, emotional, and sexual abuse. In an effort to afford victims of domestic violence the ability to protect themselves and their families, -and to ensure the safety of all employees, the Commonwealth has established the following policies:

- An employee who is a victim of domestic violence or whose children are victims and the employee is not the abuser shall be entitled to up to fifteen(15) days of paid leave per calendar year for the purposes of counseling, obtaining medical treatment, attending legal proceedings, or carrying out other necessary activities resulting from domestic violence.
 - Employees who are already eligible for ten (10) days of sick leave for domestic violence purposes, as contained in rules or collective bargaining agreements, may elect to take the fifteen (15) days of paid leave instead.
 - The fifteen (15) days of paid leave will not be charged to sick, vacation or personal leave accrual.
- An employee who is a victim of domestic violence or whose children are victims may be granted up to six (6) months of unpaid leave, where the employee requests such leave as a result of domestic violence. Leave accruals and insurance benefits shall be handled in the same way as is done for any other type of leave without pay. Upon the employee's return from leave, the agency shall restore the employee to the same position or to an equivalent position, with equivalent employment benefits, pay, and other terms and conditions of employment, provided that the employee has not been displaced from his/her position in the interim due to a reduction in force.
- Agencies may, request the following types of documentation in connection with a request for leave for purposes of domestic violence. They are advised, however, that due to the emergency nature of these requests, the employee may in some circumstances not be able to provide such documentation:
 - a judicial finding of domestic violence, such as a restraining order or pending criminal charges;
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- Department of Social Services “51A” records;
 - court records;
 - divorce proceedings;
 - police reports; or
 - signed affidavits from third parties having knowledge of the abuse.
- To the extent possible, all documentation submitted shall be kept in a secure and confidential manner so as to respect the employee's right to privacy. All such documentation will be placed in the personnel file of the victim.
 - Employees who experience personal illness or injury, or must care for an ill or injured child as a result of domestic violence, shall continue to be covered under all existing sick leave and Family Medical Leave Act rules or provisions.
 - A victim of domestic violence is strongly encouraged to notify his or her agency of the existence of a restraining order protecting the employee. Upon such notification, the agency shall make all reasonable efforts to enforce the restraining order in the workplace. Such efforts may include:
 - notifying security personnel of the identity of the person against whom the order is issued (defendant);
 - providing security personnel with a photograph or other identifying information, such as motor vehicle information;
 - having the employee's calls screened;
 - moving the employee's workstation away-from an unsecured entrance.
 - If an agency becomes aware that an active restraining order protects an employee, the agency may offer that employee a reassignment to a different geographical location. Where the victim has requested reassignment, the agency shall give the request top priority.
 - Agencies shall immediately notify the police if a violation of a restraining order occurs. at the workplace.
 - Agencies should provide the attached list of “Domestic Violence Assistance Programs” to employees who are victims of domestic violence to assist them in finding available services.

Procedures for Investigating and Disciplining Abusers

The Commonwealth has a zero tolerance policy for domestic violence. All agencies are mandated to take all instances of domestic violence seriously. The following are guidelines for disciplining abusers:

- All agencies shall immediately report any incident of domestic violence in the workplace, including violation of 209A restraining orders, to the appropriate law enforcement authorities.
- Agencies must follow existing provisions in the collective bargaining agreements when disciplining abusers.
- All investigations of domestic violence within the workplace will be conducted in a manner to protect the confidentiality of the victim, the alleged abuser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality.
- Acts of domestic violence, regardless of where they occur, will not be tolerated and may result in discipline, including, but not limited to:
 - An oral warning or reprimand;
 - A written warning or reprimand to be placed in a personnel file;
 - Required completion of a certified batterer intervention program;
 - Loss of accrued vacation time (where not prohibited by statute, regulation or collective bargaining agreement);
 - Suspension, demotion, or termination; or-
 - Any - combination of the above.
- When making decisions regarding termination⁴ agencies are asked to consider the fact that actions resulting in the elimination of the abuser's health care coverage and income may negatively affect the abuser's family as well.
- Incidents of domestic violence resulting in the conviction of a felony within the past five years. may be used as a factor in hiring determinations.
- As with all other such actions, discipline actions taken against abusers become part of their work history and will be considered when selecting employees for promotion, new work assignment and other types of personnel actions.

- In order to facilitate a defendant's compliance with a restraining order, the agency may require the defendant to accept reassignment to a different geographical location, function and/or shift.

- In the interim between a charge and the final disposition of a domestic violence offense,

agency heads may take action to address employees' safety concerns. Depending on the severity of the charge and the position of the alleged abuser, such actions may include the following, pending a judicial determination:

- placing the alleged abuser on leave with or without pay; or
- requiring alleged abusers in positions which involve the public safety, care and/or custody of clients or prisoners, or law enforcement to accept a reassignment not involving direct contact with the public or clients.

All alleged abusers shall be given referrals to certified batterer intervention programs, which are contained in the attached list.